

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TOTAL RENAL CARE OF NORTH
CAROLINA, L.L.C.,

Plaintiff,

v.

THE FRESH MARKET, INC.; THE FRESH
MARKET, INC. GROUP HEALTH CARE
PLAN; UNIFI, INC.; THE UNIFI, INC.
GROUP HEALTH CARE PLAN;
PENN WESTERN BENEFITS, INC.; and
DOES 1 through 100, inclusive,

Defendants.

1:05CV00819

ORDER

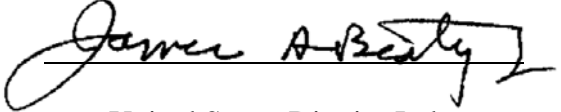
BEATY, Chief District Judge.

For the reasons discussed in the Memorandum Opinion filed contemporaneously herewith, IT IS ORDERED that the Motion to Dismiss filed by Defendants Unifi, Inc. and The Unifi, Inc. Group Health Care Plan [Document #15], the Motion for Summary Judgment filed by The Fresh Market, Inc. and The Fresh Market, Inc. Group Health Care Plan [Document #28], and the Motion to Dismiss filed by Defendant Penn Western Benefits, Inc. [Document #25] are DENIED without prejudice to the parties raising the same issues as part of a Motion for Summary Judgment after a limited period for discovery related solely to the issues raised in the Motions. Discovery shall be limited to 10 interrogatories, 3 depositions, and requests for production of relevant documents by Plaintiff and by Defendants, and must be completed within

sixty (60) days from the date of this Memorandum Opinion and Order. Defendants' Supplemental Motions must be filed within twenty (20) days after the conclusion of the limited discovery period.¹

IT IS FURTHER ORDERED that, given this ruling, Plaintiff's Motion to Strike [Document #20] and Plaintiff's Motion to Continue [Document #39] will be DENIED AS MOOT.

This, the 17th day of October, 2006.


United States District Judge

¹ The Court notes that to the extent any of the Defendants may contend in their supplemental motions that Plaintiff lacks standing and that as a result this Court lacks jurisdiction, in addition to any other arguments they may raise, the Defendants may file their motions in the alternative pursuant to Rule 12(b)(1) and/or for Summary Judgment pursuant to Rule 56. The Court also notes that should any claims remain after the Court rules on any supplemental motions, those claims would be subject to full discovery and additional Rule 56 motions prior to trial, if appropriate.